STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 10, 2004
v	No. 247855 Wayne Circuit Court
TONY R. LAWSON, Defendant-Appellant.	LC No. 01-006574-01

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Defendant Tony R. Lawson appeals as of right his bench trial conviction for first-degree home invasion.[1] Defendant was sentenced to five to twenty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Procedural History

On May 16, 2001, Amanda Gillman walked into her living room and saw a man standing in the room with his back to her. The man was trying to unlock the front door and leave the home. Ms. Gillman described the man to Sumpter Township police officer Jerry Massey as a 200-pound white male, between 5 feet 10 inches and six feet tall, wearing a baseball cap, dark colored shirt, tennis shoes and blue jeans. From behind, the man appeared to be either bald or had very short hair. Officer Massey called the description in and was told that a suspect was being held a few blocks away at the intersection of Delaware and Ohio. Ms. Gillman was taken to the intersection and positively identified defendant from the back as the man she saw in her living room. When defendant was arrested he was wearing a white hat, a black and white plaid shirt, blue jeans and tennis shoes. Officers remarked that from behind it appeared as though he was bald. Following the arrest, a canine tracking unit tracked from Ms. Gillman's home to the intersection of Delaware and Ohio.

Defendant was arraigned on June 20, 2001. He failed to appear for the final conference on July 27, 2001, and a capias was issued. He was arrested and arraigned on the capias on February 13, 2002. On April 19, 2002, defendant knowingly and voluntarily waived his right to

[1] MCL 750.110a(2).

a jury trial on the record. Defendant then failed to appear for his June 6, 2002, bench trial and another capias was issued. On November 27, 2002, a bench warrant was issued for defendant's arrest. Defendant was arrested on January 10, 2003, and remanded to Wayne County Jail without bond. That day, defendant requested and was granted substitute counsel. His request to withdraw his jury trial waiver was, however, not addressed. Defendant again requested a jury trial on January 31, 2003, which request was denied. His bench trial finally began on February 11, 2003.

II. Waiver of Jury Trial

Defendant argues that the court abused its discretion when it refused to grant the withdrawal of his waiver of jury. We disagree. The trial court's decision is reviewed on appeal for an abuse of discretion.[2]

Both the Federal and the Michigan Constitutions guarantee "the right to a speedy and public trial, by an impartial jury. . . ."[3] Trial by jury is a fundamental right of the American scheme of justice.[4] A defendant must waive his right to a jury trial voluntarily and knowingly.[5] As a general rule, a valid waiver cannot be withdrawn, except in the discretion of the court.[6] It is proper to deny a request to withdraw a waiver if there is evidence of judge shopping or an attempt to delay trial.[7]

Defendant originally delayed his trial by failing to appear for his bench trial on June 6, 2002. The court had previously recorded his valid waiver on April 19, 2002. It is clear from the record that defendant understood he had a right to a jury trial and that he voluntarily decided to waive that right. Therefore, the trial court did not abuse its discretion by denying the request.

III. Sufficiency of the Evidence

Defendant also argues that the prosecution presented insufficient evidence to establish that he was the man inside Ms. Gillman's home. We disagree. In sufficiency of the evidence claims, this court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were

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[2] *People v Wagner*, 114 Mich App 541, 559; 320 NW2d 251 (1982), quoting 47 Am Jur 2d, Jury, § 67, pp 684-685.

[3] US Const, Ams VI, XIV; Const 1963, art 1, § 20.

[4] *Duncan v Louisiana*, 391 US 145, 149; 88 S Ct 1444; 20 L Ed 2d 491 (1968).

[5] MCL 763.3(1).

[6] *Wagner*, *supra* at 558-559, quoting 47 Am Jur 2d, Jury, § 67, pp 684-685.

[7] *Id.*

proven beyond a reasonable doubt.[8] "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime."[9]

To obtain a conviction for first-degree home invasion the prosecution must show that the defendant is:

> A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:
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> * * *
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> (b) Another person is lawfully present in the dwelling.[10]

Ms. Gillman saw defendant in her home in close proximity and provided a specific description to Officer Massey. Minutes later, she positively identified defendant from the back. Ms. Gillman's description of the intruder very closely matched defendant's actual appearance. Furthermore, the canine unit tracked from Ms. Gillman's home to the intersection of Delaware and Ohio where defendant was apprehended. Viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant unlawfully entered Ms. Gillman's home.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly

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[8] *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

[9] *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

[10] *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004), quoting MCL 750.110a(2).